

**Letter of Findings Number: 10-0323P
Bad Check Penalty
For Tax Year 2009**

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ISSUE

I. Tax Administration – Bad Check Penalty.

Authority: IC § 6-8.1-10-5; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the bad check penalty.

STATEMENT OF FACTS

The bad check penalty was assessed on an attempted electronic payment made inadvertently with an error in the bank account number entered for the payment. Taxpayer made a second successful attempt at payment four days later. This second payment included this time the payment of a ten-percent penalty. Taxpayer protested the ten-percent penalty and is requesting a refund. Taxpayer did not request a hearing on this matter. This Letter of Findings is written pursuant to information in Taxpayer's file. Additional facts will be provided as necessary.

I. Tax Administration – Bad Check Penalty.

DISCUSSION

The statute for bad checks, IC § 6-8.1-10-5, reads as follows:

(a) If a person makes a tax payment with a check, credit card, debit card, or electronic funds transfer, and the department is unable to obtain payment on the check, credit card, debit card, or electronic funds transfer for its full face amount when the check, credit card, debit card, or electronic funds transfer is presented for payment through normal banking channels, a penalty of ten percent (10[percent]) of the unpaid tax or the value of the check, credit card, debit card, or electronic funds transfer, whichever is smaller, is imposed.

(b) When a penalty is imposed under subsection (a), the department shall notify the person by mail that the check, credit card, debit card, or electronic funds transfer was not honored and that the person has ten (10) days after the date the notice is mailed to pay the tax and the penalty either in cash, by certified check, or other guaranteed payment. If the person fails to make the payment within the ten (10) day period, the penalty is increased to one hundred percent (100[percent]) multiplied by the value of the check, credit card, debit card, or electronic funds transfer, or the unpaid tax, whichever is smaller.

(c) If a person has been assessed a penalty under subsection (a) more than one (1) time, the department may require all future payments for all listed taxes to be remitted with guaranteed funds.

(d) If the person subject to the penalty under this section can show that there is reasonable cause for the check, credit card, debit card, or electronic funds transfer not being honored, the department may waive the penalty imposed under this section.

Reasonable cause is defined in [45 IAC 15-11-2\(b\)](#) as: "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

Taxpayer argues that it should be refunded the ten-percent penalty because its mistaken entry of its account number was inadvertent and that it acted quickly to correct its mistake and made payment of the tax and penalty.

The fact that the bad check penalty statute actually stages from a ten-percent penalty to a one-hundred percent penalty within a short period of time suggests that the Indiana legislature intended for bad check payments to be held to a higher bar than a typical ten-percent negligence penalty. Because of the technical problems that result from inattentiveness to the entry of account numbers in an electronic payment environment, Taxpayer would have to show that it had some reasonable cause for the bad entry before the ten-percent penalty can be waived. Taxpayer's mistaken entry of one or more digits of its account number in attempting to make electronic payment describes negligence.

FINDING

Taxpayer's protest is respectfully denied.

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